Our Reference: GP-302837-OST-ALS PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Walter A. Dorfstatter
Serial Number:	10/715,633
Filing Date:	November 18, 2003
Confirmation No.:	4329
Examiner/Group Art Unit:	Robert A. Sorey/4194
Title:	METHOD AND SYSTEM OF ESTIMATING VEHICLE DAMAGE

APPEAL BRIEF

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Commissioner for Patents
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Sir:

Please enter the following Appeal Brief in the appeal filed August 6, 2008.

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I. REAL PARTY IN INTEREST

The real party in interest is Assignee General Motors Corporation, a corporation having an office and a place of business at 300 Renaissance Center, Detroit, Michigan, 48265-3000.

II. RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned attorney are not aware of any appeals or any interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-7 are the claims on appeal. *See,* Appendix.

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,064,970 to McMillan et al. (referred to herein as "McMillan") in view of U.S. Patent No. 6,470,303 to Kidd et al. (referred to herein as "Kidd").

Claims 2-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McMillan and Kidd, and further in view of U.S. Patent Publication No. 2005/0108063 to Madill et al. (referred to herein as Madill), and even further in view of Official Notice.

IV. STATUS OF AMENDMENTS

In response to the Final Office Action of May 6, 2008, no amendment pursuant to 37 C.F.R. § 1.116 was filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In this summary of claimed subject matter, all citations are to the specification of United States Patent Application S.N. 10/715,633. Further, all citations are illustrative, and support for the cited element may be found elsewhere in the specification.

Independent claim 1:

Independent claim 1 is directed to a method for estimating vehicle damage. With reference to Figs. 1 and 2, the method includes sensing a vehicle incident (see page 2, line 26 through page 3, line 2); automatically sending vehicle incident data to a service center (see page 3, line 16-24); using the incident data to automatically estimate the vehicle damage (see page 3, line 25 through page 4, line 13); and utilizing the estimated vehicle damage in a vehicle insurance decision process (see page 4, lines 25-30).

Independent claim 2:

Independent claim 2 is also directed to a method for estimating vehicle damage. With reference to Figs. 1-3, the method includes sensing a vehicle incident (see page 2, line 26 through page 3, line 2); obtaining an incident delta velocity from the vehicle incident (see page 3, lines 9-15); sending the incident delta velocity to a service center (see page 3, lines 16-24); at the service center, using the incident delta velocity with vehicle identification information to automatically estimate a vehicle damage value (see page 4, lines 3-13); receiving a claim damage estimate (see page 5, lines 3-6); comparing the automatically estimated vehicle damage value to the claim damage estimate (see page 5, lines 13-16); and in response to the comparison, making an insurance claim-processing related decision (see page 4, lines 27-30).

Independent claim 5:

Independent claim 5 is directed to a system for estimating vehicle damage. With reference to Fig. 1, the system includes a module sensing an occurrence of a vehicle incident and developing incident data responsive thereto (see page 2, line 26 through page 3, line2); an in-vehicle transceiver for automatically sending vehicle incident data to a service center (see page 3, lines 13-15); an estimator within the service center using the incident data to automatically estimate a vehicle damage value (see page 4, lines 3-13); and a decision processor providing a business recommendation responsive to the estimated vehicle damage value (see page 4, lines 25-30).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claim 1 is unpatentable under 35 U.S.C. § 103(a) over McMillan and Kidd.

Whether claims 2-7 are unpatentable under 35 U.S.C. § 103(a) over McMillan, Kidd, Madill, and Official Notice.

VII. ARGUMENTS

A. Rejection under 35 U.S.C. § 103(a) over McMillan and Kidd

a. Claim 1

In the Final Office Action dated May 6, 2008, the Examiner states that McMillan teaches all of the elements of independent claim 1, except for using incident data to automatically estimate the vehicle damage. The Examiner relies on Kidd to supply this deficiency; in particular, the Examiner states that Kidd is "relied on for damage assessment." The Examiner concludes that one skilled in the art would find it obvious to estimate vehicle incident damage using the estimation methods as taught by Kidd within the methodology of sensing, recording, and transmitting the vehicle incident data

to an insurance customer service center for insurance decision processing as taught by McMillan. The Examiner indicates that this would be obvious because such a method would provide the insurance carrier with incident notification sooner for quicker processing.

Independent claim 1 is directed to a method for estimating vehicle damage. Claim 1 recites, in part, "automatically sending **vehicle incident data** to a service center," and "using the **incident data** to automatically estimate the **vehicle damage**" (emphasis added).

Appellant submits that the data in McMillan (discussed further hereinbelow) is representative of operator and driving characteristics to determine driver behavior for insurance purposes. While such data may be used "for identifying the cause for an accident" (see McMillan column 2, lines 57-61), neither identifying the cause of an accident, nor estimating vehicle damage, is the stated purpose of McMillan. As previously mentioned, the Examiner is relying upon Kidd for such a teaching. However, Appellant submits that one skilled in the art would not be led to combine these references for at least the following reasons.

McMillan discloses a vehicle monitoring system that monitors, records, and communicates data representative of operator and vehicle driving characteristics for determining the cost of insurance (see abstract of McMillan). The operator and driving characteristic data includes, for example, actual miles driven, types of roads driven on, speed of the vehicle, safety equipment used such as a seat belt or turn signal, a time of day the vehicle is driven, a rate of acceleration, a rate of deceleration, and a rate of breaking (see column 6, lines 29-43). The types of data listed are monitored via the vehicle **when the vehicle is in operation** (see Fig. 1) in order to monitor and evaluate driver behavior.

In sharp contrast, Kidd discloses a computer system that provides a graphical user interface to allow a non-technical person to generate vehicular damage information such as, e.g., component repair estimates, component replacement information, or the like. The computer system uses **data that is input via a user into a graphical system**

to generate an estimated delta velocity, and then compares the generated delta velocity with information from vehicle crash tests to determine a vehicle damage rating. The rating may be used to determine the severity of the vehicle damage. (See column 1, lines 31-52 and column 4, lines 6-16 of Kidd.)

In Kidd, the data is ***manually*** input into the computer via ***a user***, where such data is based upon damage incurred to the vehicle as a result of a vehicle incident. A vehicle damage rating is generated for the vehicle from the input data. (See column 7, line 54 through column 8, line 3 of Kidd.) In an example, the computer includes a graphical user interface with a list of vehicle components. Damaged vehicle components may be selected from the list to create a list of damaged components. For each damaged vehicle component, the graphical user interface allows a user to select whether components were repaired or replaced with a repair estimate. The computer then determines an appropriate damage rating for the vehicle involved in the vehicle accident. (See column 8, lines 4-29 of Kidd.)

Appellant submits that since the computer system of Kidd requires manual and/or human intervention for inputting the data into the computer to estimate a delta velocity and quantify a vehicle damage rating, Kidd clearly teaches ***the opposite*** of what McMillan teaches in terms of data. In fact, the purpose of Kidd is to determine a potential for injury to vehicle occupants by determining an estimated change in velocity (not based on actual vehicle incident data) of the vehicle without having to employ trained engineers and accident reconstruction experts (see column 1, lines 13-27). This is accomplished by providing a computer system that ***is specifically constructed*** to estimate the change in velocity of a vehicle involved in a collision based on the damage to the vehicle as it is manually input into the computer system by non-technical persons (e.g., a user of the vehicle involved in the collision).

Kidd relies upon data that is input via a user, whereas McMillan relies upon data that is monitored via an on-board device. These are two very different types of data (McMillan relies upon actual use of the vehicle and the Kidd relies upon human interpretation), and thus it is submitted that one skilled in the art would not be led to

combine Kidd with McMillan. In particular, since McMillan is particularly concerned with driver behavior, the teachings of Kidd, which rely upon human interpretation of vehicle damage, would not be suitable for McMillan.

Appellant further points out that, in practice, trained engineers and accident reconstruction experts (as discussed in Kidd) are generally used to evaluate the vehicle at a time ***after*** the vehicle collision occurs. In light of this fact and with a careful reading of the Kidd disclosure, it is submitted that the computer system of Kidd is also designed to evaluate the input data at a time ***after*** the vehicle collision occurred. Thus, the computer system of Kidd is ***not*** a dynamically-operating system. This is unlike the system disclosed in McMillan, which monitors data when the vehicle is in use. It is submitted that one skilled in the art would not be inclined to implement the static system/method of Kidd with the dynamic system/method of McMillan.

For all of the above reasons, Appellant submits that there is ***no motivation to combine*** the McMillan and Kidd references.

Furthermore, McMillan teaches that the data listed above is monitored and stored via an on-board computer system. Such data may then be extracted by the central system from the vehicle at some point in the future (see column 4, lines 2-5, and column 10, lines 14-29). This is not the same as Appellant's automatic sending of data, which is performed by the on-board module 40 (see page 3, lines 21-24). McMillan also discloses that some of the operator and driving characteristic data may include a trigger event that requires additional action of which may result in a surcharge or discount during an insurance billing process (see column 8, lines 61-65). As disclosed in McMillan,

> [c]ertain trigger events may require immediate upload 110 to a central control 112 which will then be required to take appropriate action 114. For example, a trigger event would be a rapid deceleration in combination with airbag deployment indicating a collision, in which case ***the system could notify the central control of the vehicle location***. (Emphasis added; column 8, line 66 through column 9, line 4.)

Appellant submits that the data sent to the central control is ***not*** the operator or driving characteristic data (allegedly the same as Appellant's incident data according to the Examiner); but rather is the fact that a trigger event has occurred and a ***vehicle location***. Although McMillan discloses that the trigger event "may require immediate upload," McMillan does ***not*** explicitly specify that data associated with the trigger event is actually uploaded. Based on the teachings of McMillan at Col. 9, it is submitted that the information that is uploaded, at most, is simply 1) the fact that the trigger event has occurred and 2) the vehicle location at the time of the trigger event. McMillan does not teach or suggest that any vehicle incident data (e.g., delta velocity) is transmitted at this, or at any other time. In McMillan, the data that is uploaded in response to a trigger event may be used for the dispatch of emergency services and/or the dispatch of claims representatives from an insurance company (see column 9, lines 30-33 of McMillan). The usage of such data does not suggest to one reading McMillan that immediate or automatic upload of additional *vehicle incident data* would be necessary or even useful.

Appellant further submits that Kidd ***fails*** to supply the deficiencies of McMillan stated above. As previously stated, Kidd teaches that the data is manually input. As such, Kidd does not teach or suggest automatically sending data (from a vehicle) to a service center. In light of these arguments, it is submitted that the combination of the references does not teach automatically sending, as it is used in Appellant's claim 1.

For all of the reasons stated, it is submitted that Appellant's invention as defined in independent claim 1 is not anticipated, taught, or rendered obvious by McMillan and Kidd, either alone or in combination, and patentably defines over the art of record.

B. Rejection under 35 U.S.C. § 103(a) over McMillan, Kidd, Madill, Jr., and Official Notice

a. Claims 2-4

In the Final Office Action dated May 6, 2008, the Examiner asserts that the combination of McMillan, Kidd, and Madill teaches all of the elements of independent

claim 2, except for "receiving a claim damage estimate". The Examiner takes Official Notice that an insurance carrier receiving a claim damage estimate for analysis is old and well known in the insurance industry.

Independent claim 2 is directed to a method for estimating vehicle damage. Claim 2 recites, in part, "sending the ***incident delta velocity*** to a service center," "comparing the automatically estimated vehicle damage value to the claim damage estimate," and "at the service center, ***using the incident delta velocity*** with vehicle identification information to automatically estimate ***a vehicle damage value***" (emphasis added).

Appellant reiterates the arguments set forth hereinabove in support of the patentability of claim 1, and submits that one skilled in the art would not be motivated to combine the McMillan and Kidd references. Furthermore, as set forth above, the combination of the references fails to teach the sending of the vehicle incident data.

Madill does not supply this deficiency. Madill discloses a system for assessing the potential for fraud in a business transaction by providing data to a computer system and applying a fraud potential detection model (see abstract of Madill). The data may be provided, e.g., by importing the data from an insurance claim processing system of an insurance carrier (see paragraph [0058]). Appellant submits that Madill does ***not*** disclose or even suggest that delta velocity data is automatically sent to the computer system and that the delta velocity data is used to automatically estimate a vehicle damage value. In fact, Madill does not even disclose that the data is representative of a vehicle incident and, thus, sending a delta velocity (which is vehicle incident data) to a service center to estimate a vehicle damage value would not even by contemplated by the reference.

Still further, Appellant submits that the combination of the references does not teach or suggest comparing the automatically estimated vehicle damage value to the claim damage estimate. The Examiner explicitly admits that McMillan fails to teach this element (see page 5 of the final office action of May 6, 2008), and suggests that Madill

teaches a comparison of at least one data request element disclosed in the claim to additional insurance data.

Madill does teach a comparison between a request data and a fraud model or additional insurance data. Madill also teaches that the data request may be, for example, the date of the claim, the inception date of an insurance policy, details of the loss or accident (e.g., type of accident, number of parties involved, and type and degree of property damage, type and degree of injuries, etc.) (see paragraph [0054]). None of the data involved in Madill's comparison is an estimated vehicle damage value. In fact, Madill is using the comparison to estimate the potential for fraud in a claim. As such, it is submitted that Madill's comparison is in sharp contrast to Appellant's comparison, which involves both an estimated damage value and a claim damage estimate. The mere fact that Madill performs a comparison of some information is not enough to render obvious the comparison of Appellant's claim 2.

For all of the reasons stated above, it is submitted that Appellant's invention as defined in independent claim 2, and in those claims depending ultimately therefrom, is not anticipated, taught, or rendered obvious by McMillan, Kidd, Madill, and Official Notice, either alone or in combination, and patentably defines over the art of record.

b. Claims 5-7

In the Final Office Action dated May 6, 2008, the Examiner asserts that the combination of McMillan, Kidd, and Madill teaches all of the elements of independent claim 5, except for "receiving a claim damage estimate". The Examiner takes Official Notice that an insurance carrier receiving a claim damage estimate for analysis is old and well known in the insurance industry.

Independent claim 5 is directed to a system for estimating vehicle damage, respectively. Claim 5 recites, in part, "an in-vehicle transceiver for automatically sending ***vehicle incident data*** to a service center" and "an estimator within the service center ***using the incident data*** to automatically estimate ***a vehicle damage value***" (emphasis added).

Appellant reiterates the arguments set forth hereinabove in support of the patentability of claims 1 and 2, and again submits that one skilled in the art would not be motivated to combine the McMillan and Kidd references. Furthermore, as set forth above, the combination of these references fails to automatically send the vehicle incident data. Appellant further submits that Madill ***fails*** to supply the deficiencies of McMillan and Kidd.

For all of the reasons stated above, it is submitted that Appellant's invention as defined in independent claim 5, and in those claims depending ultimately therefrom, is not anticipated, taught, or rendered obvious by McMillan, Kidd, Madill, and Official Notice, either alone or in combination, and patentably defines over the art of record.

SUMMARY

The Appellant respectfully submits that claims 1-7 as currently pending fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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JCD/AMS/JRK

VIII. CLAIMS APPENDIX

1. (Previously presented) A method for estimating vehicle damage, comprising the steps of:

sensing a vehicle incident;

automatically sending vehicle incident data to a service center;

using the incident data to automatically estimate the vehicle damage; and

utilizing the estimated vehicle damage in a vehicle insurance decision process.

2. (Previously presented) A method for estimating vehicle damage, comprising the steps of:

sensing a vehicle incident;

obtaining an incident delta velocity from the vehicle incident;

sending the incident delta velocity to a service center;

at the service center, using the incident delta velocity with vehicle identification information to automatically estimate a vehicle damage value;

receiving a claim damage estimate;

comparing the automatically estimated vehicle damage value to the claim damage estimate; and

in response to the comparison, making an insurance claim-processing related decision.

3. (Original) The method of claim 2, wherein the step of making an insurance claim-processing related decision includes requiring an insurance inspection if the automatically estimated vehicle damage value differs by more than a predetermined amount from the claim damage estimate.

4. (Original) The method of claim 2, wherein the step of making an insurance claim-processing related decision includes omitting an insurance inspection if the automatically estimated vehicle damage value is consistent with the claim damage estimate.

5. (Previously presented) A system for estimating vehicle damage, comprising:

a module sensing an occurrence of a vehicle incident and developing incident data responsive thereto;

an in-vehicle transceiver for automatically sending vehicle incident data to a service center;

an estimator within the service center using the incident data to automatically estimate a vehicle damage value; and

a decision processor providing a business recommendation responsive to the estimated vehicle damage value.

6. (Original) The system of claim 5, wherein the decision processor provides a recommendation to require further verification of a vehicle insurance claim if the vehicle insurance claim is not consistent with the estimated vehicle damage report.

7. (Original) The system of claim 5, wherein the decision processor provides a recommendation to process a vehicle insurance claim without an insurance inspection if the vehicle insurance claim is consistent with the estimated vehicle damage report.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.